IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 7485 of 1995

Between:

M/s. Vijaya Venkata Lakshmi Manure Depot, Proprietors: Korukonda Manikyala Rao and Brothers
rep. by its Partner, Korukonda Appa Rao, Eluru, West Godavari District.

..... PETITIONER

AND

1.The Veyyeli Lignite Corporation Ltd., rep. by its Chairman & Managing Director,PO: Neyveli, South Arcot District, Tamilnadu.
2 Madasu Venkateswara Rao and Sons, Agents and Stockists for Neyveli Urea,rep. by its Partner, M. Srinivasa Rao Main Road, Tadepalligudem-2, West Godavari District, AP.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, in the nature of a Writ of Mandamus or any other appropriate Writ, direction or order directing the 1st respondent to forthwith return to the petitioner the amounts of Rs. 6,52,000/- (Rupees six lakhs fifty two thousand) covered by DD.No. 002355 dated 23-8-1994 and Rs. 3,26,000/- (Three lakhs twenty six thousands) covered by DD.No. 002376, dated 27-8-1994 issued by the Union Bank of India, Eluru Branch, to the 1st respondent together with Rs. 2,445/- being the exchange charges for the two Demand Drafts and interest at 19% per annum with quarterly rests from the said dates of Demand Drafts and also compensation that may be fixed by this Hon'ble Court;

Counsel for the Petitioner:MR.E.MANOHAR, Advocate

Counsel for the Respondent No.1 :Mr. Adinarayana Rao. Advocate

Counsel for Respondent No.2: None appeared.

The Court made the following :

ORDER:

The petitioner, a proprietary concern, doing business in fertilizers, has filed this Writ Petition, seeking Writ of mandamus, or any other appropriate Writ, or direction or order, directing the first respondent forthwith to return to the petitioner the amounts of Rs.6,52,000/- covered by Demand Draft dated 23-8-1994 and Rs.3,26,000/- covered by Demand Draft dated 27-8-1994 issued by the Union Bank of India, Eluru, together with exchange charges and interest at 19% per annum with quarterly rests.

The first respondent, Neyveli Lignite Corporation Limited, a Government of India Enterprise, is the producer of fertilizer, namely Neyveli Urea. The second respondent was appointed as a stockiest to market the said product of the first respondent-Company. The petitioner, which is also engaged in the business of fertilizers, has purchased Demand Drafts bearing No. 002355, dated 23-8-1994 for an amount of Rs.6,52,000/-, and, 002376, dated 27-8-1994 for an amount of Rs.3,26,000/-, for purchase of 300 Metric Tons of Urea manufactured by the first respondent-company, and handed over the same to the second respondent-Stockiest. It is the case of the petitioner that in spite of the said payment for purchase of Urea, neither the fertilizer was supplied against the said payment, nor the said amounts were returned by the respondents. The petitioner claiming as a dealer of the said fertilizer, on the ground that in spite of several notices, the respondents have neither delivered the stock nor refunded the amount, has come up with this Writ Petition seeking relief under Article 226 of the Constitution of India for issuance of directions to the respondents for payment of the amount covered by the said Demand Drafts together with interest.

Counter affidavit is filed on behalf of the first respondent-Corporation. Though there is appearance on behalf of the second respondent also, but, no counter affidavit is filed.

As stated in the counter affidavit, the case of the first respondent-Corporation is as follows.

It is stated that the first respondent-Corporation is a Government of India Enterprise, under the ministry of Coal. The first respondent-Corporation had appointed stockiests at various places in State of Andhra Pradesh for selling Urea. The stockiest receives Urea from the fertilizer factory of the first respondent and transport the same to the stock points and stores it in the hired Godowns. The stockiest shall distribute the same to the dealers or any other party as specified by the first respondent-Corporation. The stockiest shall collect the sale proceeds from the dealers and remit the same to the Corporation by way of Demand Drafts within thirty days from the date of sale. The first respondent-Corporation would maintain running account with the stockiest and when ever stocks delivered to the stockiest, it will be debited to the account of the stockiest and on remitting the amount, credit would be given to the account. Further, it is stated that there were outstanding dues from the second respondent to the tune of Rs.85.03 lakhs by 1-7-1994; as such, supply to the second respondent was suspended and the second respondent was insisted to clear the outstanding due amount. Further, it is stated, in response to such demand, the second respondent has remitted Demand Drafts for the value of Rs.8.10 lakhs in July, 1994, and, Rs.25.49 lakhs in August, 1994, which was adjusted to the account of the second respondent by giving due credit. The said Demand Drafts were obtained in the name of the Corporation, but, there was no indication of the persons who had obtained the Demand Drafts. It is further stated that as per the procedure, stockiest is expected to remit the money only for the goods already sold. Further, while denying that the petitioner is a dealer, it is stated that principal certificate was issued to the petitioner only for the purpose of obtaining licence from the competent authority as provided under the Fertilizer Control Order, but, at the same time, it is stated, the petitioner was not appointed as dealer to deal with the fertilizers of the first respondent-Corporation. Further, it is pleaded that there was no privity of contract between the first respondent and the petitioner, and, if any sums are received by way of Demand Drafts by the second respondent, then the first respondent is not responsible for

payment of the same.

It is submitted by the learned Senior Counsel, Sri E.Manohar, appearing for the petitioner that as far as the first respondent is a Government undertaking, which has en-cashed the Demand Drafts obtained by the petitioner; in that view of the manner, it is obligatory on its part, either to supply stock or to refund the money. It is further submitted that as much as the said Demand Drafts were obtained under the Open Loan Account, the petitioner had suffered huge loss on account of interest accrued on such loan; in that view of the matter, the petitioner is also entitle for interest apart from principal amount covered by the Demand Drafts. The learned Counsel has placed reliance on the judgment in the case of *M/s.Hindustan Sugar Mills Vs. The State of Rajasthan*, wherein the Apex Court while examining the obligation arising out of a Government contract has held as follows:

> " The Central Government should honour its legal obligation arising out of contract and not drive the citizen concerned to file a suit for recovery of the amount. In a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude, but should do what fairness and justice demand"

The learned Counsel also placed reliance on the judgment in the case of *ABL International Ltd Vs. Export Guarantee Corporation of India Limited*, wherein the Apex Court has held that in an appropriate case, the writ Court has jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar in regard thereto. Further reliance is also placed on the judgment in the case of *M/s. Hyderabad Commercials Vs. Indian Bank,* wherein the Apex Court while considering the transfer of amount from one account to another in a nationalized bank, directed the bank to retransfer in writ proceedings.

On the other hand, it is submitted by Sri B.Adinarayana Rao, the learned Counsel for the first respondent-Corporation that the petitioner is not the dealer of the first respondent-Corporation and, more over there is no privity of contract between the

petitioner and the first respondent-Corporation; in that view of the matter, the petitioner cannot seek any direction for refund of the amount as prayed for. Further, it is stated that as a stockiest, the second respondent was drawing stocks by remitting the amount from time to time, and the amounts covered by Demand Drafts were given by the second respondent, which amounts were adjusted in the running account of the first respondent-Corporation and second respondent; in that view of the matter, no case is made out for issuing directions for refund of the amount as prayed for, from the first respondent.

Having regard to the above said submissions, in this case, it is to be seen, though the petitioner has claimed as dealer, but the same is denied by the first respondent. The principal certificate is issued by the first respondent-Corporation, but the same is only for the purpose of obtaining retail licence under the provisions of the Fertilizers Control Order; as such, the petitioner cannot be treated as a dealer of the first respondent-Corporation. Though it is the case of the petitioner that he has purchased the Demand Drafts in the name of the first respondent-Corporation and handed over to the second respondent, but at the same time, it is to be seen, it is the case of the first respondent that the second respondent is the stockiest having running account with them, and, when ever stocks delivered to the stockiest, it will be debited to the account of the stockiest and on remitting the amount, credit would be given to the account. It is the case of the first respondent that there were outstanding dues of more than Rs.85.00 lakhs from the second respondent and the amounts paid through the Demand Drafts were adjusted towards outstanding dues from the account of the second respondent. More over, though appearance is made on behalf of the second respondent, no counter affidavit is filed to know whether any supply of fertilizers was made as against Demand Drafts, which are the subject matter of the Writ Petition. In absence of any stand of the second respondent and, in view of the stand of the first respondent in the counter affidavit that there is no privity of contract between the first respondent and the petitioner, no direction can be issued to the first respondent for return of the amount in the petition under Article 226 of the Constitution of India. Having regard to the issue involved in this Writ Petition, which is of civil nature, and, various factual disputes, which have arisen for consideration, the same can be adjudicated in appropriate civil proceedings, but, the same is no ground for issuance of directions to the first respondent for refund of

money with interest as claimed. Though it is the case of the petitioner that it has purchased Demand Drafts in the name of the first respondent to buy fertilizers, but admittedly the said Demand Drafts are handed over to the second respondent, as such, there is no contractual obligation directly between the petitioner and the first respondent to supply stocks. In absence of contractual obligation by the first respondent with the petitioner and in view of the stand of the first respondent that the normal practice was, to recover the amounts from the stockiests only after supply of stocks, and, further, in view of the stand of the first respondent in the counter affidavit that, the first respondent is not accountable to the petitioner in absence of privity of contract between them, it is not possible to decide, that the amount paid through Demand Drafts is on account of supply of fertilizers already made to the second respondent or for the future purchases on the order placed by the writ petitioner. The said aspect can be gone into in appropriate civil proceedings; as such, relief sought cannot be granted in the petition under Article 226 of the Constitution of India. Though the learned Counsel for the petitioner has placed reliance on the judgments of the Supreme Court, referred to above, but, they do not apply to the facts of the case on hand. In that view of the matter, I do not find any merit in the Writ Petition.

The Writ Petition is accordingly dismissed. No order as to costs.

----------February, 2005.

Msnr.

To

1. The Chairman & Managing Director ,The Veyyeli Lignite Corporation Ltd.,
Neyveli, South Arcot District, Tamilnadu,

2. Two CD copies.